

**STATE OF IDAHO
OUTFITTERS AND GUIDES LICENSING BOARD
SPECIAL CONFERENCE CALL
BOARD MEETING**

FINAL MINUTES

April 26, 2019

**(KEY: MSC = MOTION: MADE, SECOND: CARRIED
MSF = MOTION: MADE, SECOND: FAILED)**

THE SPECIAL MEETING OF THE IDAHO OUTFITTERS AND GUIDES LICENSING BOARD WAS CALLED TO ORDER AT 9:30 A.M. ON APRIL 26, 2019 IN THE MEETING ROOM AT THE IDAHO OUTFITTERS AND GUIDES LICENSING BOARD OFFICE, 1365 N. ORCHARD STREET, ROOM 172, BOISE, IDAHO. BOARD MEMBERS BOB BAROWSKY (CHAIRMAN), LOUISE STARK, GEORGE MCQUISTON, WAYNE HUNSUCKER AND TOM LONG PARTICIPATED BY CONFERENCE CALL. PRESENT IN THE OFFICE WERE BOARD ATTORNEY ROGER HALES, BOARD ATTORNEY JOAN CALLAHAN, EXECUTIVE DIRECTOR LORI THOMASON AND OFFICE SUPERVISOR AMANDA HARPER.

ROLL CALL - Joining the meeting via conference call were Board members Bob Barowsky (Chairman), Louise Stark, Tom Long, George McQuiston and Wayne Hunsucker. Identifying themselves as present in the office were Roger Hales (Board Attorney), Joan Callahan (Board Attorney), Lori Thomason (IOGLB Director), Amanda Harper (IOGLB Office Supervisor), Susan Knappek (IOGLB staff), Val Dean Schroder (Sulphur Creek Outfitters), and John Watts. Listening in on a personal phone was Jeff Bitton (IOGA President).

ADOPTION OF TEMPORARY RULE ON ALLOCATED TAGS: Attorney Roger Hales reviewed the IOGLB temporary rule on the designation of allocated tags that is to be adopted at this Board meeting to implement the new law. He said that in the temporary rule the definitions for allocated tags, capped zone, controlled hunt and outfitted tag use have been added. He stated that a new Rule 57 has been established, which is the rule that designates outfitted deer and elk tags. He said that additionally language had been added to use the Fish and Game approach to rounding partial tags. He explained that rounding up will only occur when a number is 0.6 and above. Mr. Hales pointed out that a rule has been added to address stipulations by outfitters for outfitter allocation designations. Lastly, he said that a rule has been added identifying the process an outfitter takes if they object to their designation, once they receive their letter. Mr. Hales then went on to present the IOGA's recommendation and proposal to the temporary rule. He said that the IOGA has added a definition for designated allocated tag and a definition for hunt. He said there is no concern for either of those definitions. Mr. Hales said that there are a few open issues from the IOGA proposal the Board will need to address and take a position at this meeting and would address them one at a time. Mr. Hales then summarized the public comments that have been received up to this point.

Mr. Hales said that the first open issue up for discussion is the IOGA proposal to add transfer language and credit for use when an outfitter transfers tags to another outfitter. He said that under the old manual and temporary rule that has since expired, there was recognition of the transfer language. He said the concern is that under the current law that IOGLB is obligated to administer, it is very specific as to what use is and what use you get credit for - either the outfitter uses an allocated tag, or they take a client with their own tag. He said that his concern if this language is added, is the IOGLB could be legally challenged based upon the law not supporting that type of use recognition. He went on to state that the rule must have some basis in

the law and cannot be contrary to any law provisions, so the concern is that since the law does not recognize giving outfitters credit for transfers, IOGLB could be challenged.

MSC (MOTION: HUNSUCKER, SECOND: LONG; AYES – MCQUISTON, STARK AND BAROWSKY; NAYES – NONE) MOTION TO GO INTO EXECUTIVE SESSION AT 10:10 A.M. TO DISCUSS WITH LEGAL COUNSEL LEGAL MATTERS PURSUANT TO IDAHO CODE 74-206(1)(F).

MSC (MOTION: LONG, SECOND: HUNSUCKER; AYES – STARK, MCQUISTON AND BAROWSKY; NAYES – NONE) TO COME OUT OF EXECUTIVE SESSION AT 10:37 A.M. WITH NO DECISIONS MADE

MSC (MOTION: STARK, SECOND: MCQUISTON; AYES – MCQUISTON AND STARK; NAYES – HUNSUCKER, LONG AND BAROWSKY) MOTION TO ADD IN THE TRANSFER LANGUAGE RECOMMENDED BY THE IOGA TO THE PROPOSED TEMPORARY RULE.

Cont. ADOPTION OF TEMPORARY RULE ON ALLOCATED TAGS: Attorney Hales continued that the second open issue of concern is the transitional language that the IOGA has proposed. He said the language establishes two different scenarios as to what law and rule applies. If there is a change by Fish and Game to a hunt or zone allocated tag numbers, the IOGA would like the new temporary rules to apply and if there has been no change in the allocated tag numbers, the IOGA would like the old rules to apply. Mr. Hales explained that his concern with this language is that the old rules have expired and were opposed by the IOGA and rejected by the Legislature. He said that legally one cannot refer to rules that do not exist. He explained that what will happen this year is a set of proposed rules will be prepared to become permanent and those will be subject to comments and negotiated rulemaking, and in that set of rules transitional language could potentially exist. Board member George McQuiston asked Mr. Hales how the outfitters that are mid-stream in their designated tags are going to be dealt with without a transition period. Mr. Hales explained that due to the new law having an emergency clause and that it is in full force and effect, tags must be calculated under the new law. Board member Louise Stark clarified that under this new law the Board staff will be recalculating any zone that has allocation to include all controlled hunts. Attorney Hales confirmed that what Ms. Stark said was correct. He continued that under the new law, that IOGLB needs to designate the allocated tags using a two-year use scenario in the law. He said all pool tags will be designated to outfitters and there will no longer be any pool tags. Board member Tom Long said that the new law has some unintended consequences and asked if there is any way that the Board can mitigate these unintended consequences. Mr. Hales explained that the Board needs to take a position and adopt a temporary rule today as to give notice to the outfitters ASAP so they know where they stand with their allocated tags and can start booking clients. **MSC (MOTION: MCQUISTON, SECOND: STARK; AYES – MCQUISTON AND STARK; NAYES – HUNSUCKER, LONG AND BAROWSKY) MOTION TO ADD IN THE TRANSITIONAL LANGUAGE PROPOSED BY THE IOGA TO THE PROPOSED TEMPORARY RULE.**

Cont. ADOPTION OF TEMPORARY RULE ON ALLOCATED TAGS: Attorney Roger Hales continued with the next open issue, the formula that the IOGA proposed. He explained that the concern with the formula proposal is that this formula is using concepts from the old allocation manual policy and the temporary rule that no longer exist. He said that the other option is the formula approach that the Board is proposing, which is based upon the base allocation language in the new law. Chairman Barowsky explained that after tag calculations have been completed outfitters will have a fourteen-day appeal period if they do not agree with the tag numbers they were allocated. Board member George McQuiston was concerned that voucher and transferred use was not being used for recalculations. Mr. Hales explained that voucher use is being used but transfer will not be used per the new law. **MSC (MOTION: LONG,**

SECOND: HUNSUCKER; AYES – LONG, HUNSUCKER AND BAROWSKY; NAYES – STARK AND MCQUISTON) MOTION TO USE THE PROPOSED IOGLB FORMULA FOR DESIGNATION OF ALLOCATED TAGS IN THE TEMPORARY RULE.

Cont. ADOPTION OF TEMPORARY RULE ON ALLOCATED TAGS: Attorney Roger Hales said that per the language in the law of “fair and equitable”, he agreed with adopting a hardship request in the rules. He recommended that the Board include Idaho Fish and Game approval into any hardship request because they are in charge of establishing use. He also said that hardship requests will need to be looked at on a case by case basis. **MSC (MOTION: HUNSUCKER, SECOND: LONG; AYES – LONG, HUNSUCKER, STARK, MCQUISTON AND BAROWSKY; NAYES – NONE) MOTION TO USE THE HARDSHIP REQUEST LANGUAGE PROPOSED BY THE IOGA IN THE PROPOSED TEMPORARY RULE.**

Cont. ADOPTION OF TEMPORARY RULE ON ALLOCATED TAGS: Attorney Roger Hales recommended the Board add language proposed by the IOGA that when an outfitter business is sold or when an operating area is adjusted the designated allocated tags that are associated with the affected area will transfer to the new owner. Mr. Hales said this would include full and partial sales. **MSC (MOTION: MCQUISTON, SECOND: STARK; AYES – LONG, HUNSUCKER, STARK, MCQUISTON AND BAROWSKY; NAYES – NONE) MOTION TO ACCEPT OPERATING AREA SALES INTO THE TEMPORARY RULE.**

CONT. ADOPTION OF TEMPORARY RULE ON ALLOCATED TAGS: MSC (MOTION: HUNSUCKER, SECOND: LONG; AYES – LONG, HUNSUCKER, STARK AND BAROWSKY; NAYES – MCQUISTON) MOTION TO ACCEPT THE TEMPORARY RULE AS PRESENTED WITH THE CORRECTIONS MADE.

DELEGATED AUTHORITY FOR DIRECTOR: Attorney Joan Callahan explained that the Board will need to take action before they meet again, in order to have the rest of the rules reauthorized and continue going forward after June 30th due to all state rules expiring on that date. She explained that in order to do this, they will need to give Director Thomason some authority to continue working with Idaho State Division of Financial Management (DFM) and legal counsel to get the rules reauthorized. She continued that DFM has an omnibus rule making notice they are having all the agencies prepare and move forward with that will get published in the June Bulletin. She explained that this notice could include the cleanup of old and outdated rules and rules the Board is looking at during the Red Tape Reduction Act. **MSC (MOTION: STARK, SECOND: HUNSUCKER; AYES – LONG, HUNSUCKER, STARK, MCQUISTON AND BAROWSKY; NAYES – NONE) MOTION TO GIVE AUTHORITY TO DIRECTOR THOMASON TO WORK WITH DFM, THE GOVERNOR’S OFFICE AND LEGAL COUNSEL TO REAUTHORIZE THE IOGLB SUBSTANTIVE RULES.**

REVIEW STIPULATION: Attorney Hales explained that a stipulation letter was received from all the outfitters in Fish and Game Units 40 and 42 who have agreed amongst themselves as to the designation of the allocated tags. He said that this request meets the requirements of rule that was accepted at today’s meeting. **MSC (MOTION: STARK, SECOND: MCQUISTON; AYES – LONG, HUNSUCKER, STARK, MCQUISTON AND BAROWSKY; NAYES – NONE) TO ACCEPT THE STIPULATION MADE BY THE OUTFITTERS IN UNITS 40 AND 42 AS TO THE DESIGNATION OF THE ALLOCATED TAGS.**

SET THE PROCESS FOR TAG DESIGNATIONS: Attorney Hales explained that according to the newly adopted temporary rule, the IOGLB staff will immediately start designating tags and prepare notices to be sent out as soon as possible to all the outfitters affected. Board member Louise Stark said that

regarding the Sawtooth A and B tags holders and that specific zone being problematic in nature, she believed that when those tag designations are made and prior to those notices being sent out to the outfitters, there needs to be a formal Board approval for the distribution of the tags. Attorney Hales said the Board will need to be flexible because the notices need to go out as soon as possible. Board member George McQuiston stated with all due respect, the Board voted on a rule, so the Board should allow the staff to do their job according to the adopted temporary rule. He said that if the Board reviews one recalculation then they should be reviewing them all. **MSC (MOTION: STARK, SECOND: LONG; AYES – LONG, HUNSUCKER, STARK AND BAROWSKY; NAYES – MCQUISTON) REQUEST A CONFERENCE CALL TO HAVE THE BOARD'S APPROVAL OF THE DESIGNATION OF THE SAWTOOTH A AND B ALLOCATED TAGS.**

MSC (MOTION: MCQUISTON, SECOND: HUNSUCKER; AYES – LONG, HUNSUCKER, STARK, MCQUISTON AND BAROWSKY; NAYES – NONE) TO ADJOURN THE MEETING AT 11:35 A.M., FRIDAY APRIL 26, 2019 WITH NO FURTHER BUSINESS TO COME BEFORE THE BOARD.

 Aug 1 2019
BOB BAROWSKY, BOARD CHAIRMAN Date

ATTEST:

 Aug 1 2019
LORI THOMASON, EXECUTIVE DIRECTOR Date